

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION

56

August 5, 2003

FROM: MARCEL TURNER, Director
Human Resources

SUBJECT: LEGAL DEFENSE CONTRACTS FOR WORKERS' COMPENSATION

RECOMMENDATION: Approve contracts with the following vendors for three years from the date of Board approval for legal defense of workers' compensation cases at the rate of \$110 per hour plus reimbursement for "out-of-pocket" costs:

AGREEMENT NO.

Adelson, Testan & Brundo
Hallett & McCormick
Serembe, Bakke & Seaman

BACKGROUND INFORMATION: In October 1972, the Board of Supervisors established the County's self-insured workers' compensation program. Since that time, Risk Management has contracted with outside firms to provide legal defense for the County and its Board Governed Special Districts in workers' compensation cases. These firms continue to handle older cases through resolution and closure. Although most new cases are now referred to County Counsel, some complex ongoing workers' compensation cases still need outside legal expertise.

On January 29, 2002, the Board approved the issuance of a Request for Proposals (RFP) for workers' compensation legal defense. The RFP was mailed to eight firms that specialize in workers' compensation defense with expertise in defending public entities. All eight firms submitted proposals by the April 18, 2002 deadline. The proposals were evaluated by a committee comprised of staff from County Counsel, the Auditor-Controller/Recorder, and Risk Management. The proposals were evaluated based upon depth and extent of public entity experience, hourly rates, and responsiveness to the RFP. The proposed rates for the eight firms ranged from a low of \$115 per hour to a high of \$130 per hour. Risk Management began negotiating with the four most qualified firms based on public entity experience. During this time period, the department was also working with County Counsel to assign them more workers' compensation cases.

On July 29, 2002, the final evaluation of the four most qualified proposals was completed. The proposals for these four firms included rates from a low of \$115 per hour to a high of \$120 per hour; however, Risk Management had existing contracts for these services at the rate of \$95 per hour and the termination date on those contracts was March 6, 2003. Since the existing contracts were at a lower rate and did not expire for more than seven months, Risk Management continued to negotiate with the firms for a better hourly rate. By delaying approval of new contracts, Risk Management was able to save \$115,840 [7,722.65 hours x (\$110 per hour - \$95 per hour)] in 2002-03.

Page 1 of 2

Record of Action of the Board of Supervisors

56
REVISED

BOARD OF SUPERVISORS**LEGAL DEFENSE CONTRACTS FOR WORKERS' COMPENSATION**

August 5, 2003

Page 2 of 2

After extensive negotiations, Risk Management was able to reach an agreement with three of the four firms to provide services at a rate of \$110 per hour. None of the firms would provide these services at \$95 per hour, which is the rate that had been in effect since 1989. Negotiations with the fourth vendor were not successful because of unresolved differences regarding the County's standard contract language. Retroactive effective dates are not required because the existing firm—Serembe, Bakke & Seaman—has a contract that has remained in effect through the conclusion of these negotiations. No work has been performed to date by the other two firms. These contracts can be terminated by either party with 30 days written notice.

REVIEW BY OTHERS: This item has been reviewed by County Counsel (Michael Sachs, Chief Deputy County Counsel) on July 22, 2003 and County Administrative Office (Daniel R. Kopp, Administrative Analyst) on July 29, 2003.

FINANCIAL IMPACT: The total cost for contract defense services for workers' compensation in 2002-03 was \$773,412 [(\$95 per hour x 7,722.65 hours) + expenses of \$39,760]. The total expected cost in 2003-04 is \$840,000. Sufficient appropriation is included in the Workers' Compensation (IAB RMG) and JPA's Workers' Compensation (IAW RMG) budgets. Costs are recovered through rates charged to departments based on actual payroll.

COST REDUCTION REVIEW: The County Administrative Office has reviewed this agenda item, concurs with the department's proposal, and recommends this item because it will enable Risk Management to procure representation, as necessary, for legal defense of workers' compensation cases.

SUPERVISORIAL DISTRICTS: All

PRESENTER: Pamela H. Thompson, Risk Manager, 386-8620